IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2672 OF 2006

Rakesh Agarwal ...Petitioner.

Versus

State of Maharashtra
and Anr. ...Respondents.

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Mr.Amit Desai with Prakash Naik, Adv. for the Petitioner.
Mr.Amit Borkar, Adv. for Respondent No.2.
Mr.A.S.Shitole, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 8th March, 2007.

P.C.:

1. Leave to amend. Amendment to be carried out forthwith.

2. Heard the learned Advocate for the petitioner, the learned APP for the State and the learned Advocate for Respondent No.2.

3. The petitioner is facing prosecution in Special Case No.290 of 2006 which is pending before the Sessions Court at Kurla, Mumbai. The said case is in respect of violation of Section 24

of SEBI Act. In the facts of this case, the maximum sentence of imprisonment which can be imposed under this section is one year.

4. The petitioner has preferred an application for exemption from personal appearance on 16.11.2006. The said application came to be rejected and warrant came to be issued against the petitioner on 16.11.2006.

5. The learned Advocate for the petitioner has stated that thereafter the petitioner has appeared before the Court. However, again on 9th February, 2007 NBW came to be issued against the petitioner. Thereafter again on 27th February, 2007 NBW came to be issued against the petitioner. In view of this, he has prayed that the petitioner may be granted exemption from personal appearance before the trial Court till the statement under Section 313 Cr.P.C. is recorded.

6. It is not the case of respondent-SEBI that the petitioner is likely to abscond. On enquiry the learned Advocate for the respondent-SEBI is unable to point out as to why the personal

appearance of the petitioner is necessary except stating that the hearing of the matter is going on hence the petitioners appearance would be required. No other reasons have been given.

7. In the present case there is no issue of identity. The personal appearance of the petitioner would not be necessary when the evidence is being led.

8. Looking to the facts of this case I am inclined to grant exemption to the petitioner from personal appearance; provided that he is represented by an Advocate on all dates of hearing before the trial Court. At the stage of recording statement under Section 313 Cr.P.C. and when the final judgment is to be pronounced on notice being given to the petitioner he shall remain present before the trial Court . NBWs issued against the petitioner by order dated 16th November, 2006, 9th February, 2007 and 27th February, 2007 are quashed.

9. Writ Petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)